Sprint

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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20554

Re: *Ex Parte* Filing of Sprint Corporation in CC Docket Nos. 96-98 and 99-68, Implementation *of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic*

Dear Ms. Dortch:

On May 3, 2002, the D.C. Circuit Court of Appeals issued an order requiring the Commission to reconsider the Internet service provider (ISP) reciprocal compensation rules adopted in the above-referenced proceeding,[1] on grounds that the Commission's reliance on Section 251(g) as a basis for finding that ISP-bound calls are not subject to Section 251(b)(5) was misplaced.[2] The Court declined to pass on the merits of the interim compensation scheme, including the growth cap and new market restrictions that were the focus of Sprint's challenge to the rules, on the grounds that, because we "can't yet know the legal basis for the Commission's ultimate rules, or even what those rules may prove to be, we have no meaningful context in which to assess these explicitly transitional measures."[3]

Sprint acknowledges the possibility that the Commission may wish to address some of the remanded issues in the context of the Commission's Intercarrier Compensation proceeding in CC Docket No. 01-92. Although the comment cycle in that proceeding closed last November, the fundamental issue remanded by the Court – the jurisdictional treatment of inter-connected local ISP-bound calls – has been repeatedly briefed to the Commission and need not be briefed again. Thus, the Commission should be in a position to act promptly without the need for further proceedings. However, unless the Commission is prepared to act quickly on all issues remanded by the Court, Sprint urges the Commission to carve out for decision the issue of the growth cap and new market

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001).
[2] *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).
[3] *Id.* at 434.

restrictions that were imposed in conjunction with the interim rates prescribed in the remanded order.[4] As Sprint and others previously have commented, these restrictions unfairly discriminate against new entrants, by allowing incumbent CLECs to receive compensation that others may not. Thus, it is inconceivable to Sprint that these hastily adopted restrictions would be ratified on remand or could survive review should they be retained on remand.

The growth cap and new market restrictions continue to penalize new entrants by precluding them from collecting compensation that other carriers are entitled to receive. Such restrictions thereby unfairly restrict a new entrant's ability to compete in the marketplace because it must recoup all of its costs from end users, while its competitors also may collect from the originating carrier. While the rules were purportedly adopted to prevent "regulatory arbitrage," the end result disadvantages companies seeking to implement legitimate business solutions to serve ISP customers. Sprint notes, for example, that while it has long served ISPs using ISDN-PRI facilities (obtained through the enhanced services access exemption), it recently has begun to transition to a new and far more cost efficient network architecture. Under the new network architecture, Sprint interconnects with other local carriers as a CLEC and, but for the growth cap and new market restrictions, would qualify for intercarrier compensation. Sprint's decision to deploy this new network architecture was not made in order to capitalize on regulatory arbitrage, but rather to facilitate network and cost efficiencies. Indeed, Sprint would have been content with a decision that applied bill-and-keep across the board.[5] Nevertheless, as long as incumbent CLECs are, and have been, entitled to receive compensation that Sprint and other new entrants are not, serious competitive inequities result.

Should the FCC ultimately conclude that the growth cap and new market restrictions are ill conceived or if, upon further judicial review, a court determines that such restrictions are baseless, the Commission has the power to grant retroactive relief by ordering the originating carriers to pay compensation at the prescribed rate to carriers previously subject to the restrictions.[6] However, such retroactive relief will not fully substitute for prompt action on remand. Until such rules are reversed, Sprint, and others, continue to be unfairly disadvantaged *vis-à-vis* other CLECs. While such relief may partially compensate companies that have been disadvantaged, retroactive relief will not provide

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[4] Sprint notes that the June 14, 2001 petition of Wireless World, LLC for reconsideration of the order is still awaiting Commission action. While Wireless World's petition seeks modification of certain aspects of those restrictions, its arguments implicate the lawfulness of those restrictions in their entirety.

[5] *See e.g.* Sprint's *ex parte* letter dated December 6, 2000 in CC Docket Nos. 96-98 and 98-185; WT Docket No. 97-207.

[6] *See United Gas Improvement Co. vs. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965).

full compensation for the missed business opportunities companies have faced, and continue to face, by not being able to compete on equal footing with other CLECs. Therefore, it is far preferable for the Commission move forward expeditiously to eliminate the growth cap and new market restrictions that unfairly disadvantage new entrants.

This letter is being filed electronically.

Sincerely,

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